

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,

vs.

Criminal No. 20-169

ANDREW AUGUSTYNIAK-DUNCAN,

Defendant.

- - -

Transcript of proceedings on December 14, 2021 United
States District Court, Pittsburgh, Pennsylvania, before
Judge Arthur J. Schwab.

APPEARANCES:

For the Government: Jonathan Lusty, Esq.

For the Defendant: Michael E. DeMatt, Esq.

Court Reporter: Marsia L. Balobeck

Proceedings recorded by mechanical stenography;
transcript produced by computer-aided transcription.

P R O C E E D I N G S

THE COURT: Good morning. This is the time and place set for sentencing in criminal number 20-00169. I'd ask counsel for the government to enter your appearance, please.

MR. LUSTY: May it please the Court, Jonathan Lusty on behalf of the government.

THE COURT: On behalf of defendant, please?

MR. DEMATT: Michael DeMatt on behalf of Mr. Augustyniak-Duncan.

THE COURT: Sir, would you kindly stand to be sworn, please.

(ANDREW AUGUSTYNIK-DUNCAN was duly sworn)

THE DEPUTY CLERK: You may be seated.

THE COURT: And whenever you speak, you all can take your mask if you're comfortable in doing that.

The court notes for the record that on June 2, 2021, defendant entered a plea of guilty to count one of a one-count indictment, charging the defendant with obstruction of law enforcement during civil disorder in violation of Title 18 United States Code Section 231(a)(3) and Section 2.

Following the guilty plea, the Court directed the probation office to prepare a pre-sentence investigation report and scheduled a sentencing hearing for October 13, 2021.

1 Because of objections raised by the parties with
2 respect to the defendant's final pre-sentence investigation
3 report, which this court determined required an evidentiary
4 hearing and additional briefing, defendant's sentencing
5 hearing was continued to today, December 14, 2021.

6 The court has received and reviewed the pre-sentence
7 investigation report and addendum thereto prepared by the
8 United States probation office. The Court has also reviewed
9 the government's position with respect to sentencing factors
10 and defendant's position with respect to sentencing factors.

11 By the way of summary only, the government asserts
12 that defendant's conduct in this case constituted aggravated
13 assault and thus, pursuant to Section 2A2.4(c) (1) of the
14 United States sentencing guidelines, section 2A2.2 of the
15 guidelines should be applied to determine defendant's offense
16 level.

17 Accordingly, the government objected to Paragraph 20
18 of the final pre-sentence investigation report because it
19 calculated defendant's base offense level under Section 2A2.4
20 and not under 2A2.2. The government then contends that
21 defendant's offense level should be increased by four levels
22 under Section 2A2.2(b) (2) (B) because a dangerous weapon was
23 used by the defendant, and should be increased by three levels
24 under 2A2.2(b) (3) (A) because the victims, police officers,
25 working during a civil disorder on May 30, 2020, sustained

1 bodily injuries -- in other words -- concussions, as part of
2 the result of defendant's actions.

3 To the contrary, defendant asserts that his conduct
4 in this case does not constitute aggravated assault, and thus
5 defendant's offense level should be calculated pursuant to
6 2A2.4.

7 Defendant then objects to Paragraph 21 of the
8 pre-sentence investigation report wherein two levels were
9 added to defendant's base level pursuant to Section 2A2.4(b)
10 on the basis that as a result of defendant's conduct on May
11 30, 2020, at least one police officer sustained bodily injury.

12 Defendant also asserts that with respect to Paragraph
13 31 of the pre-sentence investigation report, wherein it
14 states: "Defendant beat the victim to the point of
15 unconsciousness with a metal baseball bat," that this
16 statement should not be included in the pre-sentence
17 investigation report because such statement is consistent with
18 aggravated assault, which charges were withdrawn, and not a
19 simple assault, for which the defendant was eventually
20 convicted in a different situation.

21 On December 13, 2001, the court issued tentative
22 findings and rulings, indicating that the defendant's conduct
23 in this case constituted aggravated assault, and thus pursuant
24 to 2A2.4(c)(1) of the guidelines, Section 2A2.2 would be
25 applied to determine defendant's offense level.

1 The court also determined that based on its ruling
2 that it would apply 2A2.2 in determining defendant's offense
3 level and that defendant's base level shall not increased by
4 two levels pursuant to Section 2A2.4(b), as set forth in
5 Paragraph 21 of the pre-sentence investigation report, which
6 renders defendant's objection to Paragraph 21 of the
7 pre-sentence investigation report moot.

8 The court also determined defendant's offense level
9 should be increased by four levels under Section
10 2A2.2(b) (2) (B) because a dangerous weapon was used by
11 defendant, but that it should not be increased by three levels
12 under Section 2A2.2(b) (3) (A) because the government did not
13 sufficiently establish that any police officer working during
14 the civil disorder on May 30, 2020 sustained bodily injury as
15 a result of the defendant's action.

16 Finally, the court concluded as to Paragraph 31 of
17 the pre-sentence investigation report that, one, the statement
18 defendant objected to in that paragraph had no effect on
19 either defendant's offense level or criminal history category
20 calculation, and therefore no effect on the advisory
21 guidelines sentencing range applicable to defendant in this
22 case.

23 And, two, Title 18 United States Code Section 3661
24 provides that "no limitation shall be placed on the
25 information concerning the background, character and conduct

1 of a person convicted of an offense which a court in the
2 United States may receive and consider for the purposes of
3 imposing an appropriate sentence." The court adopts the
4 tentative findings and rulings as final.

5 The court also has reviewed the government's
6 sentencing memorandum, wherein it requests a guidelines
7 sentence.

8 The court has also reviewed the defendant's
9 sentencing memorandum in which defendant requests a variance
10 below the applicable advisory guideline sentencing range, with
11 mental health and substance abuse evaluation and dual
12 diagnoses treatment conditions, and letters of support
13 attached to defendant's sentencing memorandum.

14 The court has also reviewed a statement from one of
15 the police officers who was injured during the May 30, 2020
16 civil disorder.

17 Finally, the court has reviewed the sentencing
18 recommendation prepared by the probation office.

19 Sir, on June 2, 2021, you entered a plea of guilty in
20 this courtroom to count one of a one-count indictment at
21 criminal number 20-00169, charging you with obstruction of law
22 enforcement during a civil disorder in violation of Title 18
23 United States Code Section 231(a)(3) and Section 2. Correct,
24 sir?

25 THE DEFENDANT: Yes.

1 THE COURT: Following your guilty plea, I directed
2 the probation office to prepare a pre-sentence investigation
3 report, which I've reviewed along with the addendum and the
4 sentencing recommendation of the probation office.

5 Pursuant to the standing order -- pursuant to Federal
6 Rule of Criminal Procedure 32(e)(3), the Court finds it's not
7 appropriate to disclose the recommendation of the probation
8 office to defendant, his counsel, nor to counsel for the
9 government; however, sir, in determining your sentence, the
10 court will not consider any matter that's not previously been
11 disclosed to you or your attorney other than this
12 recommendation.

13 Counsel, have you reviewed the pre-sentence investigation
14 report, addendum thereto and discussed them with your client?

15 MR. DEMATT: Yes, I have, Your Honor.

16 THE COURT: Are there any errors in the pre-sentence
17 investigation report or addendum that you have not previously
18 called to the court's attention.

19 MR. DEMATT: Nothing additional, Your Honor.

20 THE COURT: Sir, have you reviewed the pre-sentence
21 investigation report, addendum thereto, tentative findings of
22 this court and other matters and discussed them with your
23 attorney?

24 THE DEFENDANT: Yeah.

25 THE COURT: Counsel, is there any legal cause why

1 sentence should not be pronounced?

2 MR. DEMATT: No, Your Honor.

3 THE COURT: Anything else you would like to say or
4 the defendant would like to say, now would be the appropriate
5 time, please.

6 MR. DEMATT: Thank you, Your Honor. First of all,
7 I'm not sure Mr. Augustyniak-Duncan intends to address the
8 court or not, but I do wish to focus on a couple of issues
9 here.

10 THE COURT: Please.

11 MR. DEMATT: With respect to our request for a
12 variance, Judge, as can be seen in the pre-sentence
13 investigation report, Mr. Augustyniak-Duncan did have a very
14 extensive -- does have a very extensive mental health history
15 as well as a very extensive substance abuse history. And it
16 certainly seems pretty clear, as you look at his criminal
17 history and, you know, the issues that he's had, that that is
18 really the root cause of all of the troubles that he has dealt
19 with during his life.

20 And it appears that when he does get some treatment
21 that he does well, he can be productive. In fact, not too
22 long before the pandemic hit, he was working and, I believe,
23 things were -- he was moving in the right direction.

24 Unfortunately, the pandemic did hit, and as a result
25 of that, he lost his work because the restaurant shut down,

1 and that's where he had been working. He -- you know, it's
2 kind of anecdotally, I think we're all familiar with the fact
3 that with the isolation that was caused by the pandemic, a lot
4 of mental health issues became exacerbated for a lot of
5 individuals. And I'll submit to the court that's exactly what
6 happened here, which ultimately led to the unfortunate
7 incident that brings him before you.

8 While he -- while he's been incarcerated, as well,
9 Your Honor, he's been subjected to much harsher conditions
10 than some people incarcerated in non-COVID times. The freedom
11 of movement is much more greatly restricted during COVID,
12 subjected him to quarantines, subjected him to things like 23
13 hours in his cell per day. And in fact, one of the times
14 we've had a hearing scheduled, it had to be rescheduled
15 because of the fact that Mr. Augustyniak-Duncan actually had
16 been diagnosed with COVID-19 while at the Allegheny County
17 Jail.

18 So under these extra harsh conditions, you know, I
19 would submit that a day in Allegheny County Jail over the past
20 year and a half, two years, is a much harsher sentence than a
21 day in Allegheny County Jail would have been prior to the
22 COVID-19 pandemic. And that's something that should be taken
23 into account with respect to what an appropriate sentence is
24 in this case.

25 Bottom line here though, is that I believe that the

1 appropriate sentence in this case should take into account the
2 mental health and substance abuse history, and address that
3 root cause. Because if he's able to tackle that, conquer
4 that, those issues, then he can be productive -- he will be
5 productive and he will not have further legal issues in the
6 future. If he's not put in the right type of treatment, if he
7 doesn't have a dual diagnoses evaluation and sort of treatment
8 that would be appropriate along those lines, he's just
9 destined to fail. So these are all things, I believe, should
10 be taken into account in the interest of justice.

11 Then finally, Mr. Augustyniak-Duncan's mother is
12 currently residing in Palm Coast, Florida, which, according to
13 my research, looks like it's in the Middle District of
14 Florida. And if he -- whenever he does get released, he does
15 intend to relocate to that area since his mother is down there
16 and she's basically his biggest support system. We would
17 request that a recommendation be made by this court that he be
18 placed as close to the Middle District of Florida as possible.

19 THE COURT: Is that like the Orlando area?

20 MR. DEMATT: Yeah, it's actually kind of -- it's like
21 a gerrymandered district, to be honest with you. It's kind of
22 between Jacksonville and Daytona.

23 THE COURT: Do you have any recommendation to any
24 training he would like to receive while incarcerated?

25 MR. DEMATT: Carpentry, apparently, Your Honor.

1 THE COURT: And any request for the residential drug
2 treatment program?

3 MR. DEMATT: Yes.

4 THE COURT: On behalf of the government, any
5 objection to defendant being incarcerated as close as possible
6 to the Middle District of Florida, that he receive mental
7 health evaluation and treatment, if necessary? And third,
8 that he receive training in carpentry or some other
9 construction trade, and that he be evaluated and admitted to
10 the 500-hour residential drug treatment program?

11 MR. LUSTY: No, Your Honor.

12 THE COURT: I'll so make those four recommendations.
13 Anything you would like to say, sir?

14 THE DEFENDANT: Yes. I just wanted to say that if
15 I'd have been busy at the time and had been on a schedule and
16 doing something other than sitting in my house, watching what
17 was going on on the news and on my medication, that I would
18 have made a better choice to stay at home. And I kick myself
19 all the time for not just staying home. And I know I could
20 make better choices in the future. I just need to stay on top
21 of my mental health and my drug issues and that's really all I
22 have.

23 THE COURT: Well, that's a very mature statement so I
24 thank you for that. And your selection of carpentry is a wise
25 one. My dad was a carpenter, it's a very satisfying trade.

1 So I compliment you on that choice also.

2 Are you satisfied with the service and representation
3 provided by your attorney?

4 THE DEFENDANT: I am.

5 THE COURT: Has he done everything you've asked him
6 to do?

7 THE DEFENDANT: Yes.

8 THE COURT: Has he done anything you believe he
9 should not have done?

10 THE DEFENDANT: No.

11 THE COURT: On behalf of the government?

12 MR. LUSTY: Yes, Your Honor. Just briefly, to
13 supplement the sentencing memorandum. Your Honor had the
14 opportunity to observe the video in this case of the incident,
15 and you've had several of the other defendants so this court
16 has a good understanding of what was going on that day.

17 And the defendant's actions, you can see from the
18 video, there was a crowd of people and some of the individuals
19 in the crowd, the defendant included, chose to take advantage
20 of what they thought was their anonymity. And take a piece of
21 concrete or two pieces of concrete and throw them towards
22 uniformed police officers. 30 minutes later, there was
23 another situation where there was a pipe the defendant took
24 and he threw it towards uniformed police officers.

25 The fact that there were officers there, trying to

1 maintain order, or to reestablish order, what people like the
2 defendant and other individuals did was just completely
3 undermine the peaceful protest. And, you know, the defendant
4 took advantage of the fact that there was a situation where
5 there was a large crowd and he served to further escalate the
6 situation. These were officers who were simply trying to do
7 their jobs that day. And you know, whether or not we can show
8 specifically that the defendant injured the officers when he
9 threw the concrete, there's clearly circumstantial evidence
10 that he did. And if not, clearly it shows that throwing
11 pieces of concrete could have caused injuries, including
12 concussions or other serious injuries.

13 Based on that, the government believes that, as other
14 defendant's were sentenced within the guidelines, the
15 guideline range sentence is appropriate in this case.

16 THE COURT: United States sentencing guidelines are
17 advisory only. The court has discretion to deviate or vary
18 from the guidelines after considering the relevant sentencing
19 factors set forth in Title 18 United States Code Section
20 3553(a). The court must also rule on any motions for
21 departure or requests for variance.

22 Before the court considers any motion for departure
23 or request for variance, as stated in my tentative findings of
24 facts and conclusions of law, which I previously adopted as
25 final, the court finds that the offense -- defendant's offense

1 level is 15, that he has a criminal history of VI, and that
2 the sentencing guidelines range is 41 to 51 months
3 imprisonment, supervised release of one to three years, a fine
4 of \$7,500 to \$75,000, a special assessment of \$100. Further,
5 defendant's guideline range falls within Zone D of the
6 guidelines, so defendant is not eligible for probation.

7 Is my statement as to defendant's offense level,
8 criminal history category and guidelines range correct?

9 MR. LUSTY: Yes, Your Honor.

10 THE COURT: Agreed?

11 MR. DEMATT: Agreed, Your Honor.

12 THE COURT: Understand, sir?

13 THE DEFENDANT: Yes.

14 THE COURT: Defendant's request for downward
15 variance -- requests a downward variance from the advisory
16 guideline sentencing range, as I will explain in detail in a
17 few moments. Taking into consideration the factors set forth
18 in Title 18 United States Code Section 3553(a), as applied to
19 this case, defendant's request for downward variance is denied
20 because the court finds a sentence within the advisory
21 guidelines is sufficient, but no greater than necessary, to
22 satisfy the purposes of sentencing, including just punishment,
23 deterrence, protection of the public, and rehabilitation of
24 the defendant.

25 Anything else on behalf of the government before I

1 pronounce sentence?

2 MR. LUSTY: No, Your Honor.

3 THE COURT: On behalf of the defendant?

4 MR. DEMATT: No Your Honor.

5 THE COURT: Sir, pursuant to the Sentencing Reform
6 Act of 1984, it is the judgment of this court that the
7 defendant be sentenced to 41 months imprisonment, which is at
8 the low end of the guidelines range. Defendant's term of
9 imprisonment is to be followed by three years of supervised
10 release.

11 Within 72 hours of release from the Bureau of
12 Prisons, defendant shall report in person to the probation
13 office in the district in which he's released to be placed on
14 supervision. While on supervised release, defendant shall not
15 commit another federal, state or local crime, shall comply
16 with the standard conditions that have been adopted by this
17 court and shall comply with the following additional
18 conditions:

19 One, defendant shall not illegally possess a
20 controlled substance. Supervised release must be revoked for
21 possession of a controlled substance.

22 Two, defendant shall not possess a firearm,
23 ammunition, destructive device or other dangerous weapon.
24 Supervised release must be revoked for possession of a
25 firearm, ammunition, destructive device or other dangerous

1 weapon.

2 Three, defendant shall participate in a program of
3 testing, and if necessary, treatment for substance abuse, said
4 program to be approved by the probation officer until such
5 time defendant is released from the program by the probation
6 officer and/or the Court. Further, the defendant shall be
7 required to contribute to the cost of services for any such
8 treatment in an amount to be determined by the probation
9 officer, but no to exceed actual costs. The defendant shall
10 submit to one drug urinalysis within 15 days of being placed
11 on supervision, and at least two periodic tests thereafter.

12 Four, defendant shall not purchase, possess and/or
13 use any substance or device designed to alter in any way or
14 substitute defendant's urine specimen for drug testing. In
15 addition, defendant shall not purchase, possess and/or use any
16 device or devices designed to be used for submission of a
17 third party drug urine specimen.

18 Five, defendant shall submit his person, property,
19 house, residence, vehicle, papers, business or place of
20 employment to a search conducted by a United States probation
21 officer at a reasonable time and in a reasonable manner based
22 upon a reasonable suspicion of contraband or evidence of a
23 violation of a condition of supervision. Failure to submit to
24 such a search may be grounds for revocation. Defendant shall
25 inform any other residents that the premises may be subject to

1 searches pursuant it this condition.

2 Six, defendant shall participate in a mental health
3 assessment and/or treatment program approved by the probation
4 officer until such time defendant is released from the program
5 by the probation officer and/or the court. Defendant shall be
6 required to contribute to the cost of services in an amount to
7 be determined by the probation officer, but not to exceed
8 actual costs. The probation office is authorized to release
9 defendant's pre-sentence investigation report to the treatment
10 provider, if so requested.

11 Seven, defendant shall participate in the United
12 States Probation Office's Work Force Development Program as
13 directed by the probation officer.

14 Eight, defendant shall cooperate in the collection of
15 DNA as directed by the probation officer. Court also imposes
16 a mandatory special assessment of \$100, constituting a \$100
17 special assessment at each count to which the defendant has
18 pled guilty, which shall be paid to the Clerk of Court
19 forthwith. Based upon the financial information contained in
20 the pre-sentence investigation report, court finds the
21 defendant does not have the ability to pay a fine and
22 therefore waives imposition of any fine.

23 Sir, the reason for your sentence is as follows: The
24 court considers a sentence of 41 months imprisonment and three
25 years supervised release to be sufficient, but no greater than

1 necessary to comply with the goals of sentencing as set forth
2 in Title 18 United States Code Section 3553(a)(2), which are
3 to reflect the seriousness of this offense, to promote respect
4 for the law and provide for just punishment for this offense,
5 to afford adequate deterrence to criminal conduct, to protect
6 the public from further crimes by this defendant and to
7 provide the defendant with needed educational, vocational
8 training and medical care in the most effective manner.

9 The court has considered all the sentencing factors
10 set forth in Title 18 United States Code Section 3553(a),
11 including those presented by the government and defense, and
12 as set forth in the pre-sentence investigation report and
13 addendum thereto.

14 The court has also considered the following: First,
15 the court has considered the nature and circumstances of the
16 offense. Defendant pled guilty to obstruction of law
17 enforcement during a civil disorder, for his engaging in
18 serious criminal conduct that is further addressed in the
19 pre-sentence investigation report. And the court
20 incorporates, by reference, Paragraphs 7 through 13 of the
21 pre-sentence investigation report, upon which the court bases
22 this sentence.

23 By way of summary only: On May 30, 2020, defendant
24 repeatedly threw objects at police officers who were working
25 during a civil disorder in Downtown Pittsburgh, Pennsylvania.

1 Most significantly, at one point in the civil disorder,
2 defendant intentionally, knowingly and purposefully threw a
3 large piece of concrete directly at a line of police officers
4 while in close proximity to those officers with the intent to
5 cause bodily injury to the officers with the concrete.

6 The court finds defendant's pattern of conduct that
7 day to be outrageous. And indeed, the court finds defendant's
8 conduct on that day to be so outrageous that even if the court
9 had agreed to defendant's position that he did not -- his
10 conduct did not constitute aggravated assault, such as the
11 offense level was calculated under Section 2A2.4 and not
12 Section 2A2.2, the court still would have imposed the sentence
13 of 41 months imprisonment.

14 Second, the court has considered the defendant's
15 criminal, family and social history and personal
16 characteristics as further outline in the pre-sentence
17 investigation report at Paragraphs 29 through 74, which the
18 court incorporates as part of the basis for his sentence
19 today.

20 By way of summary only: Defendant is approximately
21 26 years old, graduated from high school, has worked in the
22 past at a number of restaurants, but is currently unemployed
23 and obviously is incarcerated.

24 Defendant has a significant criminal history, which
25 is why the criminal history category is VI. His adult

1 criminal history includes convictions for simple assault, drug
2 possession twice, robbery, corruption of a minor, giving a
3 13-year-old drugs, driving under the influence of alcohol or
4 controlled substance, in particular drugs, fleeing or
5 attempting to elude an officer, driving while license was
6 suspended or revoke and resisting arrest. He also committed
7 the instant offense while he was on state court parole.

8 Defendant has significant history of mental health
9 issues, as well as a history drug abuse. Accordingly, both
10 mental health and drug abuse evaluation and treatment are part
11 of the sentence, both based on the recommendations I've made
12 to the Bureau of Prisons as well as during the three-year
13 period of his supervised release thereafter.

14 Third, the court has also considered the kinds of
15 sentences available for this offense and the sentencing
16 guidelines under the advisory guidelines and applicable policy
17 statements adopted by the sentencing commission.

18 And lastly, the court has considered the need to
19 avoid unwarranted sentencing disparities among defendants with
20 similar records who have been found guilty of similar conduct.
21 In particular, I believe, this sentence is consistent with the
22 other sentences that I've imposed with other defendants that
23 participated in this event, considering their particular
24 conduct, their criminal history category and other factors set
25 forth in Section 3553(a).

1 On behalf of the government, has my statement of
2 reasons adequately addressed all objections, concerns and
3 issues raised?

4 MR. LUSTY: Yes, Your Honor.

5 THE COURT: There are any other sentencing factors
6 under Section 3553(a) that the court has failed to address?

7 MR. LUSTY: No, Your Honor.

8 THE COURT: Counsel, does my statement of reasons
9 adequately address all objections, concerns and issues raised?

10 MR. DEMATT: Yes, Your Honor.

11 THE COURT: Are there any other sentencing factors
12 under Section 3553(a) that the court has failed to address?

13 MR. DEMATT: No.

14 THE COURT: Have you had an opportunity to discuss
15 with the defendant his right to appeal?

16 MR. DEMATT: I have, Your Honor.

17 THE COURT: Sir, you have the right to appeal from
18 the orders of his court, judgment of guilty and/or from the
19 sentence imposed. You have the right to have a lawyer
20 represent you on appeal at no cost to you. If you cannot
21 afford them, certified copies of the necessary records and
22 transcripts will be furnished at the expense of the United
23 States government. If you appeal, the notice of appeal must
24 be filed within 14 days of today, otherwise you will lose your
25 right to appeal. If you request, the Clerk of Court will

1 immediately prepare and file a notice of appeal on your
2 behalf.

3 Do you wish to appeal, sir?

4 THE DEFENDANT: No.

5 THE COURT: Do you understand if you change your mind
6 and decide to appeal, any notice of appeal must be filed
7 within 14 days of today, otherwise you will lose your right to
8 appeal?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And if you change your mind and decide to
11 appeal, you will lose your current counsel for any appeal.
12 Correct?

13 THE DEFENDANT: Yes.

14 THE COURT: Anything else on behalf of the
15 government?

16 MR. LUSTY: No. Thank you, Your Honor.

17 THE COURT: Defendant?

18 MR. DEMATT: No, Your Honor.

19 THE COURT: Sir, you're a relatively young man,
20 certainly from my vantage point. I thought your statement
21 today was very mature. And I think you know the way forward,
22 if you so choose to follow it.

23 I've done everything I can as part of my
24 recommendations for your incarceration and for the time that
25 you're on supervised release to get you the care and

1 evaluations that are necessary. So I just want to wish you
2 well. And if you stay wise in what you've told me and get a
3 trade, I think you can have a good life once this -- your
4 incarceration is over. I think you've been incarcerated since
5 that incident. Correct?

6 MR. DEMATT: Yes, Your Honor.

7 THE COURT: So all that time will count as federal
8 time, which will be calculated by the Bureau of Prisons. If
9 there's any issue in that regard, just reach out to your
10 counsel and he'll get it clarified. But his total time, was
11 he arrested totally on federal time or has he had some state
12 time resulting from this incident?

13 MR. LUSTY: So initially, he had a state detainer. I
14 believe his bond was revoked at some point in this case.

15 MR. DEMATT: I know there's definitely going to be a
16 calculation issue here because there's some state time.

17 THE COURT: Well, I would just ask that counsel for
18 the government and defendant work together if there's an issue
19 so that the Bureau of Prisons has accurate information in
20 order to make the evaluation so that hopefully most of his
21 time will count as federal time.

22 So the two of you working together can certainly help
23 the defendant in that regard. Defendant is remanded to the
24 custody of the United States Marshal Service for transfer to
25 the Bureau of Prisons. Everyone should remain seated until

1 the marshals remove the defendant. I wish you well, sir.

2 THE DEFENDANT: Thank you.

3 THE COURT: Be wise.

4 Thank you, counsel.

5 MR. LUSTY: Thank you, Your Honor.

6 MR. DEMATT: Thank you.

7 THE COURT: I adjourn this hearing.

8 C E R T I F I C A T E

9 I, MARSIA L. BALOBECK, certify that the foregoing
10 is a correct transcript from the record of proceedings in the
11 above-entitled case.

12 \s\ Marsia L. Balobeck
13 MARSIA L. BALOBECK
14 Official Court Reporter

10/27/2022
Date of Certification